



225203

LAW OFFICES OF
PELLEGRINI AND EMMERICH
A PROFESSIONAL CORPORATION
SUITE 390
GATEWAY ONE ON THE MALL
701 MARKET STREET
ST. LOUIS, MISSOURI 63101

FRANK L. PELLEGRINI
JULIE A. EMMERICH

TELEPHONE (314) 241-7445
FAX (314) 241-7449

VIA AIRBORNE EXPRESS
FOR SETTLEMENT PURPOSES ONLY

February 16, 1998

Ms. Leslie A. Kirby
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: Eagle Marine Industries, Inc. and Riverport Terminal and Fleeting, Inc. -
Demand For Reimbursement Of Costs Expended At Site Q Of The Area II
Sauget Superfund Site at Sauget, Illinois

Dear Leslie:

This is a follow-up to our continuing conversations concerning EPA's November 14, 1997 demand upon Riverport Terminal and Fleeting Company (Riverport) and Eagle Marine Industries, Inc. (Eagle Marine) for reimbursement of approximately \$170,652.85 in alleged response costs. For your information, Riverport merged with Eagle Marine in approximately 1986.

On behalf of Eagle Marine, we are interested in continuing discussions of our client's potential liability for Site Q. Toward that end, as I said I would send to you, enclosed is an affidavit signed by Richard D. Burke, President of Eagle Marine, which outlines some of the critical points we believe EPA should consider in evaluating the potential liability of Eagle Marine and Riverport.

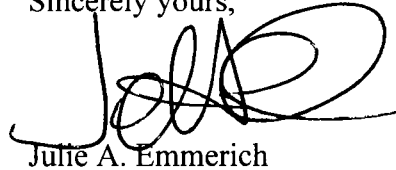
The record of previous proceedings before the Illinois Pollution Control Board demonstrates that the State of Illinois has viewed Eagle Marine and Riverport as purchasers who did not contribute to the present conditions on Site Q. Riverport and Eagle Marine have always cooperated with IEPA and EPA to maintain Site Q in an environmentally safe condition. Two of the most significant contributions have been the placing of approximately 2,600 feet of rip rap along the Mississippi River shoreline to prevent erosion in the River, and the present plan to complete the final cover on approximately 35 acres of the former Sauget refuse disposal area.

Ms. L. A. Kirby
February 16, 1998
Page -2-

Tom Martin of EPA and Paul Takacs of IEPA have had some involvement with this present plan. The evidence is strong that Eagle Marine and Riverport were and are innocent and good faith purchasers of the property who reasonably relied upon the representations of the seller and believed that Site Q had been used by Sauget and Company solely as a sanitary landfill. Eagle Marine and Riverport are, therefore, exempt from liability under CERCLA.

Eagle Marine is interested in continuing its discussions with EPA. While Eagle Marine firmly believes that its status as an innocent purchaser exempts it from CERCLA liability, in the alternative, Eagle Marine offers its status as an innocent purchaser, and consistently cooperative landowner, in mitigation. Please note that I have copied Tom Martin and Paul Takacs, because they have had some recent participation in Eagle Marine's recent activities at the Site. Please call me once you have had the opportunity to discuss the enclosed materials.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Julie A. Emmerich', with a stylized, cursive script.

Julie A. Emmerich

JAЕ/gf
Enc.

cc: Tom Martin
Paul Takacs
Richard Burke

TOM MARTIN

U.S. Army Corps of Engineers, St. Louis District
1222 Spruce Street
St. Louis, Missouri 63103-2833
Fax Number: (314)331-8741

~~PREDISCHARGE NOTIFICATION (PDN) DATE:~~

SECTION 10. ONLY, NO FILL, SOME MODIFICATION
OF PREVIOUSLY AUTHORIZED ACTIVITIES.

VERBAL COMMENTS DUE (5 days): _____

WRITTEN COMMENTS DUE (10 days): _____

PLEASE FAX OR CALL WITH COMMENTS

<u>AGENCY</u>	<u>FAX#</u>	<u>TO:</u>	<u>PHONE#</u>
USEPA	312-886-7804	DAVE SCHULENBERG	312-886-2776
USFWS/IL	618-997-8961	JOYCE COLLINS	618-997-3344
IDNR	217-524-1454	ROBERT DALTON	217-782-3862
ISHPO/IL	217-785-4512	ANNE HAAKER	217-785-4998
IDNR	217-557-0728	BOB SCHANZLE	217-785-4863
IEPA	217-782-9891	BRUCE YURDIN	217-782-0610
OTHER			

CORPS CONTACT: MIKE DAILY

NUMBER OF PAGES: 5

RAMS Identification Number: 199710380

~~NWP~~ No(s): LOP -

I'M SORRY FOR THE DELAY. I'M GETTING THIS TO YOU.
FOR YOUR REVIEW, I HONESTLY HAVEN'T HAD TIME TO WORK
ON IT UNTIL RECENTLY. MEND.

APPLICANT: EAGLE MARINE INDUSTRIES

COUNTY: ST. CLAIR

ENCLOSURES: ☒ YES ☐ NO

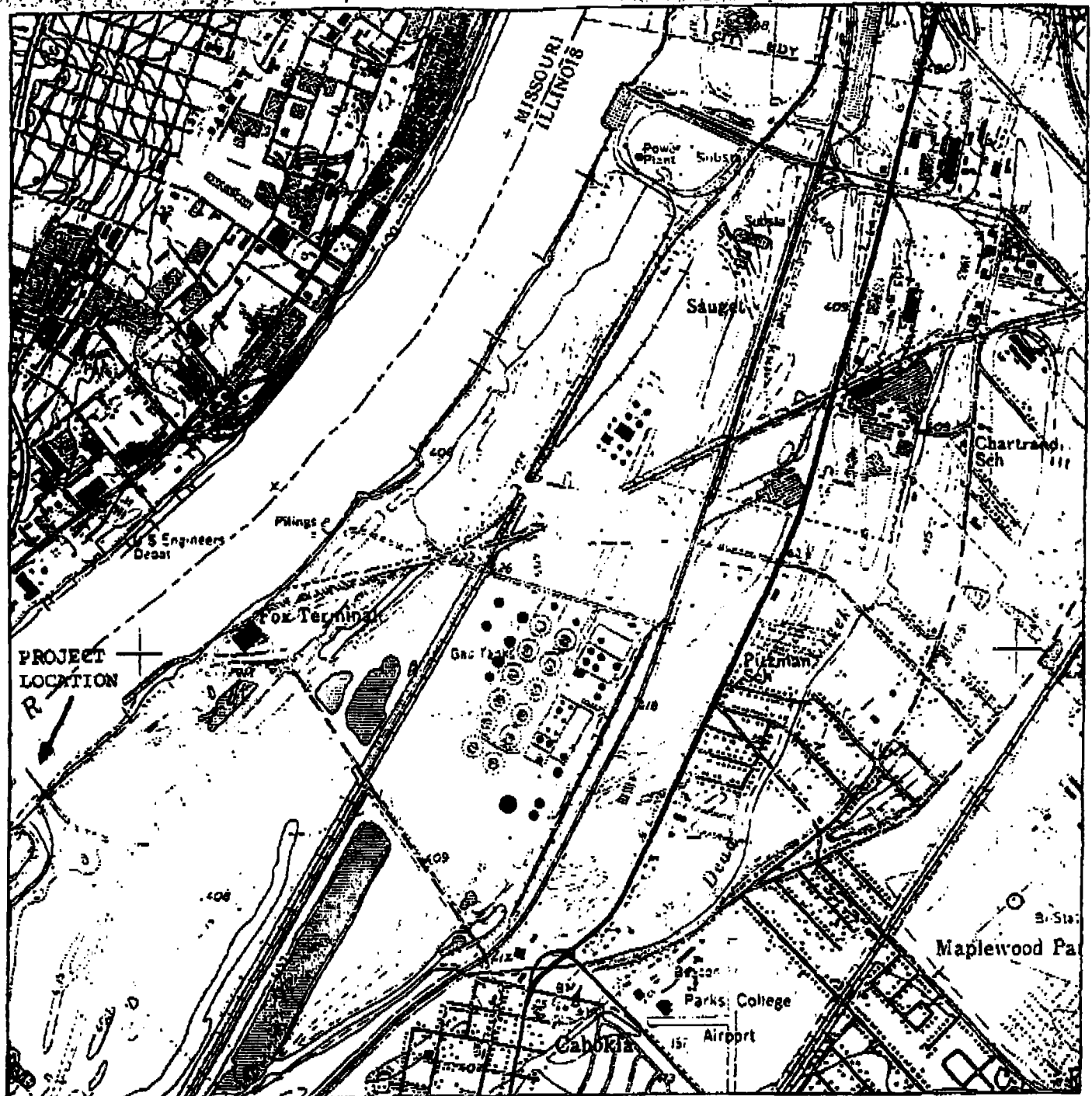
AGENCY RESPONSE N/A

Will provide written comments: ☐ Yes ☐ No

LEGAL DESCRIPTION

Commitment No.: 97090016

THAT CERTAIN TRACT OR PARCEL OF LAND SITUATED, LYING AND BEING IN UNITED STATES SURVEY 759 IN THE COMMONS OF CAHOKIA, CENTERVILLE TOWNSHIP, ST. CLAIR COUNTY, ILLINOIS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, BEING PART OF THE TRACT OF LAND CONVEYED TO GRANTOR HEREIN BY PITZMAN AND RICHARDSON BY DEED DATED JULY 19, 1948. BEGINNING AT A POINT IN THE SOUTHERLY LINE OF SAID TRACT, DISTANT 400 FEET N. 78 DEGREES 16 MINUTES 3/4 SECONDS FROM AN IRON PIPE MARKING THE MOST SOUTHERLY CORNER OF SAID TRACT; THENCE WITH THE SOUTHERLY LINE OF SAID TRACT N. 78 DEGREES 16 MINUTES 3/4 SECONDS 1,285 FEET, MORE OR LESS, TO THE EASTERN INNER HARBOR LINE OF MISSISSIPPI RIVER AS ESTABLISHED APRIL 6, 1903; THENCE IN A NORTHWESTERLY DIRECTION, AT RIGHT ANGLES, TO SAID HARBOR LINE A DISTANCE OF 250 FEET TO A POINT IN THE EASTERN OUTER HARBOR LINE; THENCE NORTHEASTWARDLY WITH SAID EASTERN OUTER HARBOR LINE 650 FEET TO A POINT; THENCE IN A SOUTHEASTERLY DIRECTION, AT RIGHT ANGLES, TO SAID EASTERN OUTER HARBOR LINE A DISTANCE OF 250 FEET TO THE EASTERN INNER HARBOR LINE; THENCE CONTINUING IN A STRAIGHT LINE A DISTANCE OF 1,125 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.



USGS
CAHOKIA QUADRANGLE
ILLINOIS - MISSOURI
7.5 MINUTE SERIES (TOPOGRAPHIC)

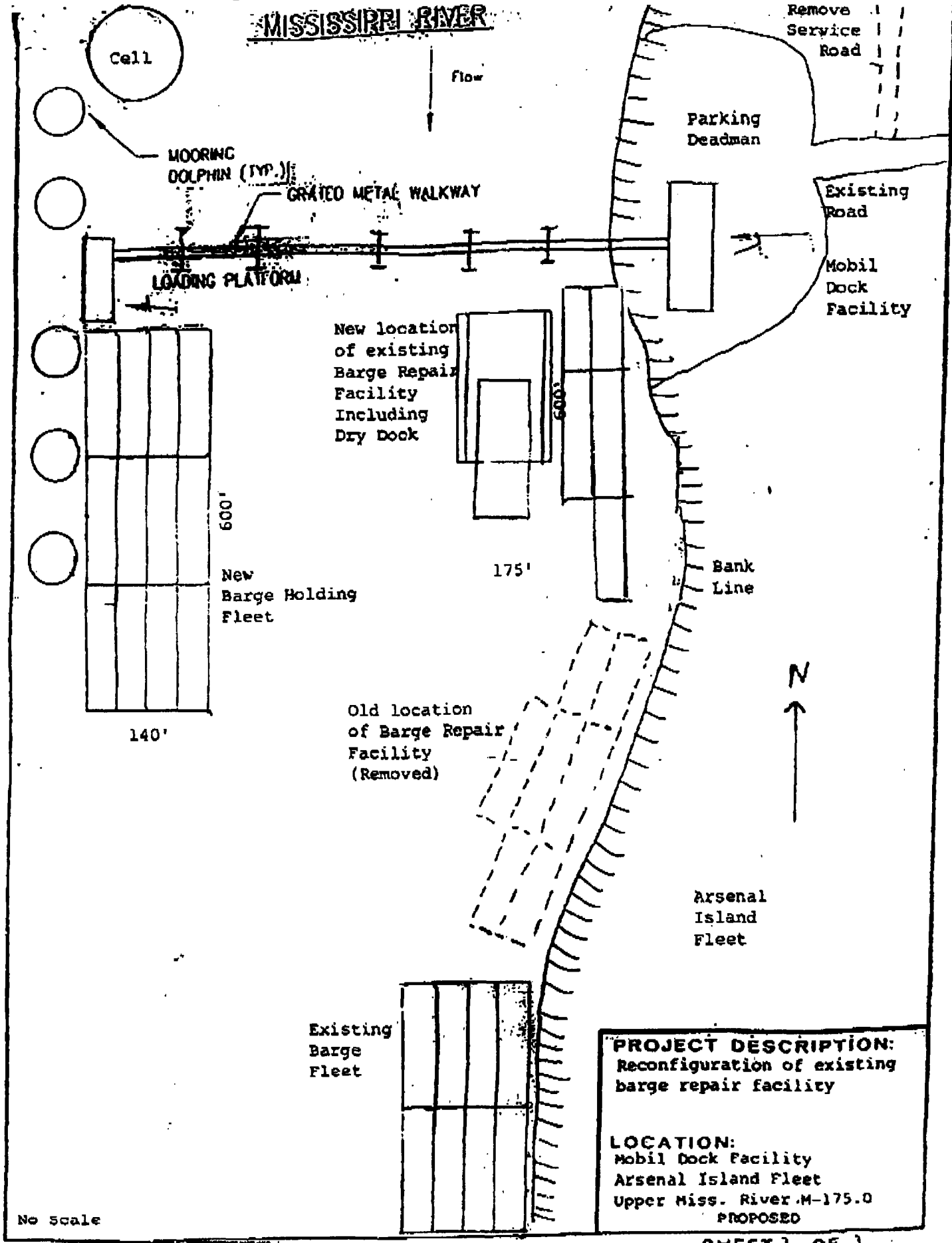
N3830-W9007.5/7.5
1954

PHOTOREVISED 1968 AND 1974 1993
AMS 2961 II SW-SERIES V863

ILLINOIS

PROJECT DESCRIPTION:
Reconfiguration of existing
barge repair facility

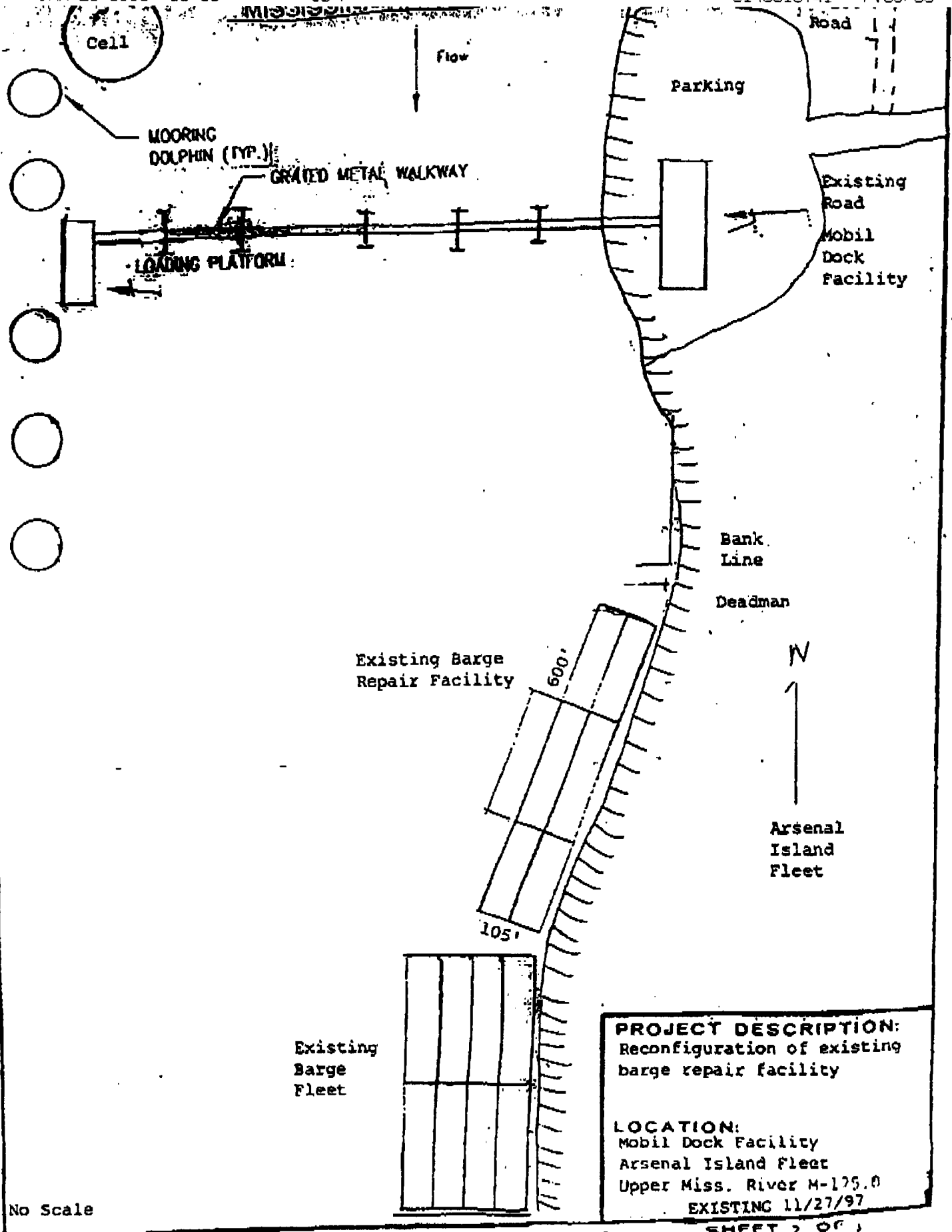
LOCATION:
Mobil Dock Facility
Arsenal Island Fleet
Upper Miss. River M-175.0
VICINITY



No scale

PROJECT DESCRIPTION:
Reconfiguration of existing barge repair facility

LOCATION:
Mobil Dock Facility
Arsenal Island Fleet
Upper Miss. River M-175.0
PROPOSED



No Scale

JOINT APPLICATION FORM

1. Application Number (to be assigned by Agency) 	2. Date <div style="display: flex; justify-content: space-around; align-items: center;"> 02 Day 12 Month 97 Year </div>	3. For agency use only (Date Received) 										
4. Name and address of applicant Eagle Marine Industries, Inc. #1 Riverview Avenue Sauget, IL 62201 Telephone no., during business hours AC 618 875-1153 AC 618 875-1505	5. Name, address, and title of authorized agent Richard D. Burke c/o Eagle Marine Industries, Inc. #1 Riverview Avenue Sauget, IL 62201 Telephone no., during business hours AC 618 875-1153 AC 618 875-1505											
6. Project Description and Remarks: Describe in detail the proposed activity, its purpose, and intended use. Also indicate the drainage area of the watershed to the downstream limit. Use attachments if needed. Reconfigure existing barge repair facility located UMR Mile 175.0 (Arsenal Island) Permit #7029. Barge repair facility would be moved up river (approximately 500 feet) immediately south of the Mobil Dock Facility. The Mobil Dock Facility (Permit #184 and #644) would no longer be used as a liquid transfer facility. A dry dock (64x104) would be added to the repair facility. A new Holding Fleet for barges waiting repair would be located land side of the Mooring Dolphins at the Mobil Dock Facility.												
7. Names, addresses, and telephone numbers of all adjoining and potentially affected property owners, including the owner of the subject property if different from applicant. Down river - Eagle Marine Industries, Inc. Up river - Amercian Milling Company P.O. Box 5005 Cahokia, IL 62206												
8. Location of activity <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> Mississippi River Arsenal Island UMR Mile 175.0 <small>Name of waterway at location of the activity</small> </div> <div style="width: 35%; text-align: center;"> Legal Description: See Attached <div style="display: flex; justify-content: space-around; font-size: small;"> 1/4 Sec. Twp. Rgn. PM </div> </div> </div> <div style="margin-top: 10px;"> Address: <hr/> Street, road, or other descriptive location Cahokia <small>In or near city or town</small> <hr/> St. Clair <small>County</small> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> <hr/> <small>State</small> </div> <div> <hr/> <small>Zip Code</small> </div> </div>												
9. Date activity is proposed to commence 15 days after permit issuance Estimated Time of Construction 20 days												
10. Is any portion of the activity for which authorization is sought now complete? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <small>If answer is "Yes" give reasons in item 6.</small> Month and Year the activity was completed _____ <small>Indicate the existing work on drawings.</small>												
11. List all approvals or certifications required by other federal, interstate, state, or local agencies for any structures, construction, discharge, deposits, or other activities described in this application. If this form is being used for concurrent application to the Corps of Engineers, Illinois Department of Natural Resources, and Illinois Environmental Protection Agency, these agencies need not be listed. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%; text-align: left;">Issuing Agency</th> <th style="width: 15%; text-align: left;">Type Approval</th> <th style="width: 15%; text-align: left;">Modification No.</th> <th style="width: 20%; text-align: left;">Date of Application</th> <th style="width: 20%; text-align: left;">Date of Approval</th> </tr> </thead> <tbody> <tr> <td colspan="5">None</td> </tr> </tbody> </table>			Issuing Agency	Type Approval	Modification No.	Date of Application	Date of Approval	None				
Issuing Agency	Type Approval	Modification No.	Date of Application	Date of Approval								
None												
12. Has any agency denied approval for the activity described herein or for any activity directly related to the activity described herein? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <small>If "Yes", explain in item 6.</small>												
13. Application is hereby made for authorization of the activities described herein. I certify that I am familiar with information contained in the application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. <div style="display: flex; justify-content: space-between;"> <div> Signature of Applicant or Authorized Agent <hr/> </div> <div> Type or Printed Name of Applicant or Authorized Agent <hr/> </div> </div>												

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

AFFIDAVIT OF RICHARD D. BURKE

I, Richard D. Burke, being duly sworn upon my oath, do state and depose as follows:

1. I am President of Eagle Marine Industries, Inc. (Eagle Marine) and have served in that role for 5 years. I am also a shareholder of the stock of Eagle Marine. Eagle Marine is engaged in the business of operating barge fleetings and terminal facilities.

2. I am above the age of 18 years, I have personal knowledge of the facts concerning the activities which are stated herein concerning Eagle Marine and the former Riverport Terminal and Fleeting, Inc. (Riverport), which was merged into Eagle Marine in approximately 1986. I have been informed of facts concerning the past operation of Site Q by Sauget & Company from persons having personal knowledge of those facts, and I am, therefore, competent to testify about them.

3. Since 1969, I have worked for Eagle Marine on a daily basis, although my title has varied. Prior to December 13, 1973, Eagle Marine was known as Notre Dame Fleeting & Towing Service, Inc. (Notre Dame). Notre Dame was incorporated in 1961. All references to Notre Dame or Eagle Marine will be stated as "Eagle Marine" in this affidavit. Riverport Fleeting, Inc. was incorporated on November 17, 1974, and its name was changed to Riverport Terminal & Fleeting, Inc. on October 28, 1977. In 1986, Riverport merged into Eagle Marine.

Prior to the merger, Riverport was also engaged in operating barge fleeting and terminal facilities. I also worked for Riverport during its existence.

4. On or about April 2, 1973, Riverport's predecessor in interest (referred to herein as "Riverport") and Eagle Marine purchased separate portions of the properties that are currently designated by the U. S. Environmental Protection Agency (EPA) and the Illinois Environmental Protection Agency (IEPA) as Sauget, Illinois Area II, Site Q (the Property). Riverport and Eagle Marine purchased the Property from an entity known as The Cahokia Trust. The Property was purchased solely to provide access and frontage to the Mississippi River for barge fleeting and terminal operations. The Property was not purchased for the purpose of owning or operating a landfill.

5. From approximately the Fall of 1959 until the time Riverport and Eagle Marine purchased the Property from The Cahokia Trust, an entity known as Sauget and Company, which is a Delaware corporation owned and operated principally by Paul Sauget and possibly others, operated a landfill on the Property by accepting waste for disposal from customers. Upon information and belief, the State of Illinois issued a permit to Sauget and Company to operate the landfill.

6. Neither Eagle Marine nor Riverport has ever operated the Property as a landfill, or accepted or allowed waste of any kind, whether solid, hazardous or toxic, to be disposed of on the Property.

7. When Riverport and Eagle Marine purchased the Property in 1973, and in negotiations preceding the sale, Paul Sauget and Sauget and Company represented to Fred Leyhe, deceased, the chief negotiator for Riverport and Eagle Marine, that the Property had been

used only as a sanitary disposal area to dispose of materials such as residential waste. Neither Eagle Marine nor Riverport or their directors, shareholders, officers or employees had knowledge that hazardous wastes, toxic wastes or hazardous substances had possibly been disposed of on the Property. Attached as Exhibit A is correspondence from the attorney for Sauget and Company representing that it did not knowingly accept barrels containing toxic, flammable or other hazardous material and that it took reasonable precautions to prevent any such barrels from being deposited without its knowledge. During the time Riverport and Eagle Marine have owned the Property, to the best of my knowledge, no hazardous wastes or hazardous substances, as those terms are defined in the Resource Conservation and Recovery Act of 1976 or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, respectively, have been deposited on the Property.

8. Since the time Riverport and Eagle Marine purchased the Property, Eagle Marine and Riverport have cooperated fully with both EPA and IEPA to maintain the Property in a safe manner and contain the waste materials disposed by Sauget and Company on the Property. Eagle Marine and Riverport have allowed access to EPA and IEPA on several occasions for the purpose of assessing conditions to assure that no hazardous wastes or hazardous substances have been released from the Property. Some of the acts of cooperation are described below.

9. In approximately 1978, IEPA instituted an action for the purpose of securing the commitment of Paul Sauget and Sauget and Company to place a suitable cover at least two feet thick over the entire surface of the former refuse disposal site on the Property. On or about June 24, 1978, a Stipulation, Statement of Facts and Proposal for Settlement (Stipulation) was submitted to the Illinois Pollution Control Board by IEPA, Paul Sauget and Sauget and Company

to resolve the matter. A copy of the Stipulation is attached hereto as Exhibit B. Paul Sauget and Sauget and Company had previously agreed to place such a cover over the Property by October 26, 1973, but did not meet that deadline. The Stipulation stated the cover was required to be in place within 30 months of approval of the Stipulation.

10. Eagle Marine and Riverport were initially named in the IEPA action as owners of the Property, but were dismissed from IEPA's action on the basis that they were innocent purchasers or owners of the Property. Eagle Marine and Riverport were not required to take any action to cover the Property through IEPA's action.

11. Paul Sauget and Sauget and Company did not meet the requirements of the Stipulation. Approximately 35 acres remain left to be covered.

12. Eagle Marine is currently cooperating on a voluntary basis with IEPA to complete the cover, which IEPA required Paul Sauget and Sauget and Company to place on the Property. IEPA has never demanded that Eagle Marine or Riverport undertake this action. Toward that end, in November 1996, I had conversations with Tom Martin of EPA, Paul Takacs of IEPA and Mike Daily of the Regulatory Functions branch of the U. S. Army Corps of Engineers, to learn each agency's requirements concerning covering of the Property. Eagle Marine hired ATC Environmental as a consultant to prepare the necessary plans to implement the plan to cover the Property. ATC submitted a draft work plan to IEPA in October 1997 and a Work Plan for Filling the Northern Portion of the Former Sauget Refuse Disposal Site on December 5, 1997. Eagle Marine is awaiting final approval from IEPA so that it can implement the plan.

13. Eagle Marine applied for, and received, a permit from the U. S. Army Corps of Engineers (the Corps) to place rip rap along the entire shoreline of the Property. The Corps

issued Permit #1323 in 1987 for this project, and Eagle Marine completed the project by approximately 1993. The purpose of the project was to stabilize the structural integrity of the shoreline and prevent soil erosion into the Mississippi River. Eagle Marine covered approximately 2,600 feet of shoreline with rip rap. This project addressed one of the primary concerns of EPA and IEPA with Area 2, which is the potential soil erosion into the Mississippi River.

14. Eagle Marine granted EPA and IEPA access to the Property in 1994 to investigate the alleged exposure of drums on the Property which resulted from flooding in 1993 and/or 1994, and responded to all EPA and IEPA inquiries in connection with the investigation.

15. Eagle Marine and Riverport were innocent purchasers of the Property, and therefore, are exempt from liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9607 et seq., based upon the following facts:

- (a) During negotiations for the purchase of the Property by Riverport and Eagle Marine, Fred Leyhe, deceased, the chief negotiator for Riverport, made all appropriate inquiry of The Cahokia Trust and Sauget and Company concerning materials disposed on the Property. Fred Leyhe asked for all information concerning the identity, type and volume of materials disposed on the Property. Fred Leyhe was informed by Paul Sauget and Donald C. Elsaesser, Trustee of The Cahokia Trust, that the Property had been used solely as a sanitary landfill, to accept materials such as household waste.
- (b) Eagle Marine and Riverport have taken action to prevent releases from the Site, through their efforts to cover the exposed portion of the Site, which are discussed above,

and through their cooperation with EPA and IEPA to allow those agencies to conduct environmental investigations of the Property to assure there has been no release of hazardous substances from the Property.

(c) After Riverport and Eagle Marine purchased the Property, The Cahokia Trust, by Donald C. Elsaesser, Trustee, provided Paul Sauget with a 30-day cancellation notice, dated April 4, 1973, which prohibited further use of the Property as a landfill. A copy of the letter is attached hereto as Exhibit C.

(d) After the cancellation notice was issued, Eagle Marine and Riverport were informed that Paul Sauget and Sauget and Company might possibly have trespassed upon the Property and deposited additional waste materials on the Property. Eagle Marine does not know whether such materials were, in fact, deposited on the Property, or whether the materials, if deposited, contained hazardous wastes, hazardous substances or toxic substances. Nevertheless, out of an abundance of caution, Eagle Marine and Riverport provided a notice dated June 15, 1973 to Paul Sauget of Sauget and Company, demanding that any such depositing of waste materials cease immediately. A copy of that notice is attached hereto as Exhibit D.

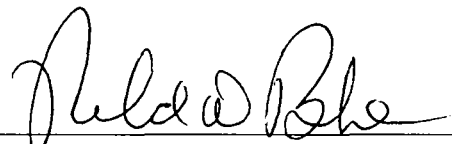
(e) Between April and June 15, 1973, neither Eagle Marine nor Riverport nor their officers, directors or shareholders were present on the Property to observe any alleged depositing of waste materials nor do they know whether such activities actually occurred.

16. Assuming, as EPA alleges, that drums of PCB-containing materials were uncovered by the flood of 1993 and/or 1994, that event is an Act of God, and costs allegedly incurred by EPA and IEPA to address the impact of the flooding are exempt from CERCLA

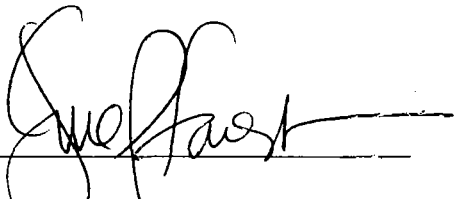
liability pursuant to 42 U.S.C. §9607(b). Neither Eagle Marine nor Riverport nor any other person or entity, to my knowledge, contributed to the alleged uncovering of drums.

17. Eagle Marine has been informed that EPA believes that the drums of PCB-containing materials were crushed by some form of earthmoving equipment, and the contents of the drums spread in the surrounding soil during late 1994 or early 1995. To the best of my knowledge, neither I nor any other employee or officer of Eagle Marine knows the identity of the person or persons who performed such acts, assuming the acts occurred. To the best of my knowledge, no employee or officer of Eagle Marine participated in, had knowledge of, or authorized the crushing and spreading of the contents of the drums.

Further Affiant Sayeth Naught.


Richard D. Burke

On this 16th day of February, 1998, before me personally appeared, Richard D. Burke, to me known to be the person described herein and who executed the foregoing Affidavit, and acknowledged that he executed the same as his free act and deed.


Notary Public

My Commission Expires:

11/19/99

Gina P. Faust
Notary Public, State of Missouri
County of St. Louis
My Commission Expires 11/19/99

BAKER & SCRIVNER
ATTORNEYS-AT-LAW

July 11, 1980

Mr. Dick Burke
Eagle Marine Industries, Inc.
Suite 1754
112 North Fourth Street
St. Louis, Missouri 63102

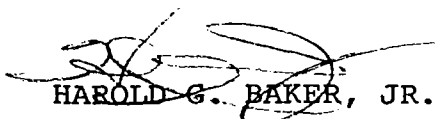
Dear Mr. Burke:

I am advised that The Pillsbury Company has made a claim against someone as the result of finding a buried barrel during excavation on the premises it leases from you which you acquired from the Cahokia Trust several years ago and which are located in the Village of Sauget, St. Clair County, Illinois.

As you know, I have, for 10 years last past, represented Sauget & Co., a Delaware corporation. For at least 20 years prior to the time you acquired the property, it operated thereon a sanitary land fill.

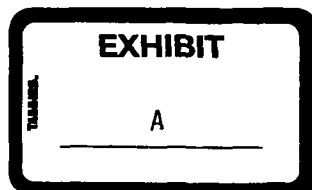
It did not knowingly accept barrels containing any toxic, flammable or other hazardous material and it took reasonable steps to prevent any such barrels from being deposited without its knowledge.

Very truly yours,


HAROLD G. BAKER, JR.

HGBjr/mcm

cc: Hon. Paul Sauget



STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

Original Do Not Remove

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 3 - 1985

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)

Complainant,)

V.)

PAUL SAUGET, individually, SAUGET AND)
COMPANY, a Delaware corporation, EAGLE)
MARINE INDUSTRIES, INC., a Missouri)
corporation, and RIVER PORT FLEETING)
INC., a Missouri corporation,)

Respondents.)

POLLUTION CONTROL BOARD

PCB 77-84

STIPULATION, STATEMENT OF FACTS AND
PROPOSAL FOR SETTLEMENT

For purposes of settlement only, Respondents, PAUL SAUGET and SAUGET AND COMPANY, a Delaware corporation, by their attorney HAROLD G. BAKER, JR., and the Complainant, ENVIRONMENTAL PROTECTION AGENCY (hereinafter the "Agency"), by its attorney, WILLIAM J. SCOTT, Attorney General of the State of Illinois, do hereby stipulate and agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that the Statement of Facts is made and agreed upon for the purpose of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding unless the Illinois Pollution Control Board (hereinafter the "Board") approves and disposes of this matter on each and every one of the terms and conditions of settlement set forth herein. This document is admissible only

EXHIBIT B

EXHIBIT

B

for the purposes of this cause and may not be used in any other proceeding between any of these parties and others. None of the matters covered herein may be construed as facts or admissions of fact or admissions against interest for any purpose other than this proceeding.

STATEMENT OF FACTS

1. PAUL SAUGET, one of the Respondents, is an officer and the principal owner of SAUGET AND COMPANY, a Delaware corporation.
2. SAUGET AND COMPANY, one of the Respondents, is a corporation organized under the laws of the State of Delaware and, at all pertinent times until November 15, 1973, was authorized to transact business in the State of Illinois.
3. Beginning in the fall of 1959 and continuing each and every day to on or about April 26, 1973, SAUGET AND COMPANY operated a refuse disposal site located in Township 2 North, Range 10 West of the 3rd Principal Meridian, Centerville Township, St. Clair County, Illinois.

The refuse disposal site consists of two (2) parts which are separated by the right-of-way of the Alton & Southern Railroad.

The part of the refuse disposal site north of the Railroad is bounded on the south by the Railroad; on the west by a line parallel to, and approximately 300 feet easterly of, the Mississippi River; on the north by Riverview Avenue; and on the ^{East}~~west~~ by the levee; all excluding the landfill of Monsanto Company and the fly-ash pond of Union Electric Company.

The part of the refuse disposal site south of the Railroad is bounded on the north by the Railroad; on the east by the levee; on the south by Red House Road; and on the west by a road (shown on Respondents' Exhibit No. 2) which is generally parallel to, and 1200 feet easterly of, the Mississippi River; all excluding an area at the southeastern most corner of such part, which area has an approximate width (measured perpendicularly to the levee) of 500 feet and an approximate length (measured parallel to the levee) of 1200 feet.

4. EAGLE MARINE INDUSTRIES, INC., one of the Respondents, is a corporation organized under the laws of the State of Missouri and presently owns a portion of said refuse disposal site formerly operated by Respondent SAUGET AND COMPANY. RIVER PORT FLEETING, INC., one of the Respondents, is a corporation organized under the laws of the State of Missouri and presently owns a portion of said refuse disposal site formerly operated by Respondent SAUGET AND COMPANY. On February 24, 1978, a motion to dismiss without prejudice was filed by the Agency with the Board regarding the Respondents EAGLE MARINE INDUSTRIES, INC. and RIVER PORT FLEETING, INC., based upon a Stipulation entered into by the Agency with said Respondents.

5. Respondent PAUL SAUGET and Respondent SAUGET AND COMPANY (hereinafter "said Respondents") have failed to place a final suitable cover of at least two (2) feet of suitable material over the entire surface of all completed portions of the refuse disposal site described in paragraph 3, although cover which said Respondents believed to be acceptable or suitable, or both, has been placed

on the site, despite notices from EPA to the contrary. Said final cover should have been placed upon the site prior to October 26, 1973.

6. The parties hereby agree that the Hearing Officer may instanter enter an order that the record of a prior proceeding (PCB 71-29) involving said Respondents shall be incorporated, pursuant to Board's Procedural Rule 320(c), into the record of this proceeding.

7. In PCB 71-29, Respondent PAUL SAUGET testified that he had been given permission from the Director of the Illinois Department of Public Health to use cinders as a cover material (R. 157 and 175) and this testimony was accepted by the Board. Therefore, cinders used by said Respondents as a cover material prior to the decision of the Board in PCB 71-29 on May 26, 1971 are accepted as cover material for the purposes of this stipulation but not for that portion of the refuse disposal site operated after May 26, 1971. Furthermore, cinders shall not hereafter be used by said Respondents in complying with the provisions hereof.

8. In said Respondents' refuse disposal site, refuse was deposited commencing in the northern portion of the site in 1959 and continuing thereafter in a southerly direction.

9. The parties agree that the 1966 operating face shall be deemed to have been a straight line perpendicular to the levee running along the road at the south end of Union Electric's fly-ash pond (as shown in said Respondents' Exhibit No. 1).



10. The parties also agree that the 1971 operating shall be deemed to have been a straight line parallel to, and 1200 feet southerly of, said 1966 operating face (as shown in said Respondents' Exhibit No. 2).

PROPOSED TERMS OF SETTLEMENT

A. As a result of the settlement discussions had and the control programs agreed to hereinafter, and partially heretofore implemented by said Respondents, the parties believe the public interest will be best served by the resolution of this enforcement action under the terms and conditions provided herein. In accordance with the procedure for settlement prescribed in Board's Procedural Rule 331, the parties offer this Stipulation, Statement of Facts and Proposed Terms of Settlement in lieu of a full evidentiary hearing.

B. This stipulation is expressly conditioned upon, and effective only with, approval hereof in all respects by the Board. All statements and agreements contained herein shall be null and void and of no effect and shall not be used in any further proceeding in the event that the Board fails to approve these Terms of Settlement in all respects.

C. Respondents, PAUL SAUGET and SAUGET AND COMPANY, admit the allegations contained in paragraph 15 of Count V of the Amended Complaint, in that each of them, since October 26, 1973, has failed to place a compacted layer of at least two (2) feet of suitable material over the entire portion of the refuse disposal site

heretofore operated by them. As stated in paragraph 5 hereof, they do not necessarily admit, however, that final cover has not been placed upon the refuse disposal site, there having heretofore been disputes concerning the depth or the suitability, or both, of the final cover.

D. Said Respondents agree to place two (2) feet of suitable cover material on said site in accordance with Rule 5.07(b) of the Rules and Regulations for Refuse Disposal Sites and Facilities (promulgated in 1966 by the Illinois Department of Public Health) as follows:

(1.) From the 1966 operating face through the 1971 operating face of the refuse disposal site, said Respondents agree to place suitable cover over the site, where necessary, to bring the total final cover to a depth of two (2) feet; cinders already in place used as a cover material north of the 1971 operating face of the site being acceptable as suitable cover material between the 1966 and 1971 operating faces of the site;

(2.) South of the 1971 operating face, said Respondents agree to place suitable cover material over the site, where necessary, to bring the total of final suitable cover to a depth of two (2) feet, excluding cinders already in place;

(3.) Such additional cover shall be placed on the site starting with that part south of the 1971 operating face;

(4.) Subject to extensions of time which may be granted under the provisions of paragraph G hereof, such final cover shall be placed over 20% of the site during each six (6) month period after the date upon which the Board enters an Order approving this settlement and such work on all parts of the site shall be completed within thirty (30) months of the date that the Board enters such Order.

E. The final cover used by Respondents during the month of May, 1978 and sampled by the Agency is satisfactory and acceptable to the Agency. In the event that Respondents hereafter change the type of final cover from that used in May, 1978 and sampled by the Agency, said Respondents shall notify Agency and cooperate

with it in taking samples of the proposed new type of final cov

F. Except as hereinbefore specified, the final cover to be used by the Respondents must be "suitable." Neither the Board nor the Agency has heretofore officially adopted any definition of "suitable" cover. The Agency proposes to the Board that it adopt the definition attached hereto, marked Exhibit A and, by this reference, incorporated herein and made a part hereof. Respondents have not seen such definition until the date of the hearing at which this Stipulation is filed and, for that reason and others, do not approve, disapprove or agree to such definition. Respondents' final suitable cover hereafter used shall conform to such definition, if it be approved and adopted by the Board, subject to said Respondents' rights to seek a variance or variances from such definition.

G. Said Respondents' obligation to meet any time requirements set out herein shall be extended as the result of an act of God or by a circumstance beyond said Respondents' control or by the owners' use of the site in violation of the provisions of their Stipulation or by any other circumstance agreed to by the parties. Prompt written notice of the claimed applicability of this provision must be given to Agency by said Respondents, or either of them, or a claim for extension based upon a given set of facts is waived. Should the parties fail to agree on what circumstances shall excuse a delay in the performance or on the period of extension due, Respondents may submit the matter to the Board of resolution after a hearing which may be called or requested by either the Agency or the Respondents, or both, in accordance with Board Procedural

Rule 334(b)(1). Any such hearing must be requested within (30) months of the date upon which the Board enters an Order this settlement, plus any extensions requested by the Respondent and granted by the Agency or the Board under the provisions of this paragraph G.

H. Said Respondents agree to file with the Agency a performance bond in the penal sum of \$125,000.00.

I. Said Respondents, jointly and severally, agree to pay a civil penalty of \$5000 in the aggregate. According to the Agency such a penalty is necessary to aid in the enforcement of the Act in view of the prior decision of the Board regarding said Respondents in PCB 71-29 and in view of the previous notice given to said Respondents regarding the violation of the Act cited in paragraph 15 of Count V of the Amended Complaint and in view of the amount of time that has elapsed since the date that final cover was due. Said penalty shall be payable in two (2) monthly installments of \$2,500.00 per month on the thirtieth (30th) and sixteenth (60th) calendar days after the date upon which the Board enters an Order approving this settlement.


I. All other allegations of the Complaint and the Amended Complaint, as they pertain to said Respondents, shall be dismissed with prejudice to the Agency.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Complainant

By: Mike Mangy by D
Its Director

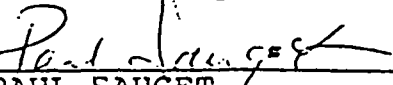
WILLIAM J. SCOTT, Attorney General

By: _____
Assistant Attorney General
ATTORNEY FOR COMPLAINANT




PAUL SAUGET
One of the Respondents

SAUGET AND COMPANY
One of the Respondents

By: 

PAUL SAUGET
Its President



HAROLD G. BAKER, JR.
56 South 65th Street
Belleville, Illinois 62223
(618) 397-6444
ATTORNEY FOR SAID RESPONDENTS

The term "suitable material" as found in Illinois Pollution Control Board Solid Waste Rules and Regulations, Chapter 7, Rule 305: Cover shall have the following definition: naturally occurring soils which allow minimal surface water infiltration, which are compactable, which will promote plant growth, and which have a low permeability, or, such other material as approved by the Environmental Protection Agency.


EXHIBIT A

CERTIFICATION

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, do hereby certify that the attached is a true and correct copy of the Stipulation, Statement of Facts, and Proposal for Settlement submitted to the IPCB on June 24, 1978 and adopted by the Board on August 24, 1978 in the matter of PCB 77-84 by the Illinois Environmental Protection Agency, Complainant and Paul Sauget, individual, Sauget and Company, Respondent.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board

SUBSCRIBED AND SWORN TO before
me this 9th day of January,
1981.


Notary Public

My Commission Expires

11/4/81

CAHOKIA TRUST PROPERTIES

(Mississippi River Industrial Sites)

Cahokia, Illinois and Monsanto, Illinois

~~6201 MARYLAND AVENUE~~ • ST. LOUIS, MISSOURI 63105 • ~~PA-1-6000~~
135 No. Meramec Avenue 863-5005

April 4, 1973

Mr. Paul Sauget
Sauget and Company
2902 Monsanto Avenue
Sauget, Illinois 62206

Dear Mr. Sauget:

This is to officially advise you that on Monday, April 2, 1973 the Trustees of Cahokia Trust officially closed the sales on Tract #4 (165.143 acres) and Tract #5 (635.868 acres) of the Cahokia Trust properties of which you are thoroughly familiar.

On Tract #4 the Trustee's Deed was delivered to Fred H. Leyhe.

On Tract #5 the Trustee's Deed was delivered to Notre Dame Fleeting & Towing Service, Inc. The sales were closed at Chicago Title Insurance Company in Belleville and the Deeds were duly recorded.

In accordance with the letter agreement dated July 14, 1972 by and between Trustees of the Cahokia Trust and Sauget and Company we are hereby giving you the 30 day cancellation notice required as per the last paragraph of this agreement, "The rental of said land site will be on a month to month basis and will be subject to a 30 day cancellation notice in event said property is sold".

As you recall on Monday, January 22, 1973, I brought Mr. Fred Leyhe and Mr. Dick Burke, both officers of Notre Dame Fleeting & Towing Service, Inc. to your office in Sauget Village for the purpose of meeting each other. We advised you at the time that both Tracts #4 and #5 were scheduled to close on April 2, 1973. We also went over with you the new surveys of both tracts that were completed in January by Elbring Surveying Co.

Mr. Fred Leyhe will be calling you in the near future to discuss with you any future plans on both parcels.

Enclosed is a copy of the agreement referred to above and dated July 14, 1972. Mr. Fred Leyhe's phone # is GAL-3575 and his address is:

Mr. Fred H. Leyhe, President
Notre Dame Fleeting & Towing Service, Inc.
Suite 1252
112 N. Fourth Street
St. Louis, Missouri 63102

EXHIBIT

C

June 15, 1973

Mr. Paul Sauget
c/o Sauget City Hall
Sauget, Illinois 62201

"Personal and Confidential"

In re: Sauget Landfill
Fred Leyhe - Notre Dame Fleeting & Towing, Inc.

Dear Mr. Sauget:

We wish to advise that this office represents Mr. Fred Leyhe and the Notre Dame Fleeting & Towing, Inc. Mr. Leyhe is now the present owner of Tract 4 and 5 which are noted on the enclosed plat. It is our understanding that you are operating a landfill on Tract 4 at the present time even though the property is not owned by you. Mr. Leyhe has indicated to me that there is no agreement at the present time between your company and his that would permit dumping on Tract 4. It is our further understanding that dumping is continuing on Tract 4 at the present time without the permission of Mr. Leyhe or any officer of his company.

Further, we have been informed by the Environmental Protection Agency that the type of dumping that is being performed is violative of several of their standards. Therefore, please consider this letter our notice to you to cease immediately all of your landfill operations on the property owned by my client.

If you have any questions or wish to discuss the matter in more detail, please contact me.

Very truly yours,

Frank L. Pellagrini

FLP/65

Enclosure

